

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

FCA US LLC

and

Case 08-CA-185825

MEE SANDERS

**LOCAL 12, INTERNATIONAL UNION,
AUTOMOBILE, AEROSPACE &
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW), AFL-CIO**

and

Case 08-CB-185835

MEE SANDERS

ORDER¹

The Petition to Revoke subpoena duces tecum B-1-V78WXZ, filed by FCA US LLC, is denied.² The subpoena seeks information relevant to the matters under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations.³ Further, the Petitioner has failed to establish any other legal basis for

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

² The Petitioner's request that its petition to revoke be made part of the official record in this case is denied without prejudice to renewal at the appropriate time in a formal proceeding.

³ In considering the petition to revoke, we have evaluated the subpoena in light of the Region's modifications, as stated in its opposition brief, narrowing the temporal scope of the subpoena requests and limiting them to the Toledo Assembly Complex, the facility at which the Charging Party is employed.

Member Kaplan respectfully dissents from the Board majority's denial of the petition to revoke as to subpoena requests encompassed in the Region's post-petition modifications that dramatically narrowed temporal and geographical scopes. The petition to revoke argued that the subpoena requests were overly broad, unduly burdensome, lacking in specificity, and irrelevant. When subpoena requests are overly

revoking the subpoena.⁴ See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., October 31, 2017

LAUREN McFERRAN,	MEMBER
MARVIN E. KAPLAN,	MEMBER
WILLIAM J. EMANUEL,	MEMBER

broad or otherwise seek information that does not reasonably relate to matters under investigation, and when a subpoenaed party's petition to revoke raises appropriate objections to the requests on that basis, Member Kaplan believes it is more appropriate for the Board to *grant* the petition to revoke as to such requests, rather than denying the petition to revoke (as the Board majority does here) based on a change that was communicated only after the petition to revoke is under consideration by the Board. See Sec. 11(1) (stating the Board "shall revoke" any subpoena where "the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required"). Finally, Member Kaplan believes that granting a petition to revoke in the circumstances presented here would be without prejudice to the potential issuance of a new subpoena that is appropriate in scope (subject to applicable time limits and other requirements set forth in the Act and the Board's Rules and Regulations).

⁴ To the extent that the Petitioner asserts that no responsive evidence exists for certain subpoena paragraphs, it is not required to produce subpoenaed evidence that it does not possess, but the Petitioner is required to conduct a reasonable and diligent search for all requested evidence, and as to requested evidence that the Petitioner determines it does not possess, the Petitioner must affirmatively represent to the Region that no responsive evidence exists. In addition, the Petitioner states that it did not retain certain responsive documents. The Definitions and Instructions section of the subpoena states at par. 10 the information that the Petitioner must provide regarding any such discarded documents.

To the extent that the Employer has provided some of the requested material, it is not required to produce that information again, provided that the Employer accurately describes which documents under subpoena it has already provided, states whether those previously supplied documents constitute all of the requested documents, and provides all of the information that was subpoenaed.